

ROUTING AND RECORD SHEET *OLC 74-0249/a*

SUBJECT: (Optional)		H.R. 12206, A Bill to Amend 5 USC 552 (The Freedom of Information Act)		
FROM:  John F. Blake Acting Director of Security			EXTENSION	NO.
			6777	DATE 13 MAR 1974
TO: (Officer designation, room number, and building)		DATE		OFFICER'S INITIALS
		RECEIVED	FORWARDED	
1.	Legislative Counsel			
2.	Attn: Mr. [REDACTED] Room 7 C 35 Hdqs.	STATINTL		
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13 MAR 1974

MEMORANDUM FOR: Legislative Counsel  
ATTENTION : Mr. [REDACTED] STATINTL  
SUBJECT : H.R. 12206, A Bill to Amend 5 USC 552  
(The Freedom of Information Act)  
REFERENCE : OLC 74-0249 dtd 20 February 1974

1. Pursuant to your request, we have reviewed the reference Bill, introduced by Representative Koch, which would amend the Freedom of Information Act by requiring that individuals be apprised of records concerning them that are maintained by Government agencies and would further grant certain rights of access to the records. We feel that several provisions of the Bill could create extremely serious difficulties for this Office should it be favorably acted upon by the Congress in its present form.

2. Some question exists as to whether provisions of the existing Freedom of Information Act, notwithstanding the amendments to be added by H.R. 12206, would continue to provide the Agency with exemptions in regard to the Office of Security's personnel security investigative files. If the proposed legislation should become law and is interpreted as not granting exception to the Agency, the following problems would be posed to this Office:

a. Subsection (a) (1) (A) would appear to require every Government agency to notify the subject of a file each time it provided information from the file to another agency or to any person not employed by the agency maintaining the file. This would impact heavily on the Office of Security's Outside Agency Name Check (OANC) program and could

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well result in the termination of this liaison service because of the administrative burden entailed. Our ability to conduct checks at other Federal agencies would, presumably, be similarly limited. The potential collapse of the entire U. S. Government National Agency Check program would result in needless and expensive duplication of investigative effort, as well as giving rise to the likelihood that pertinent security information of record with one agency might remain unknown to other agencies having valid interests.

c. Subsection (a) (6) would permit any individual who is the subject of a file maintained by a Government agency (other than such types of files as are specifically exempted) to request the removal of erroneous information of any kind and would require the agency maintaining the file to notify all other agencies and persons to whom the erroneous material had been transferred of its removal. This provision fails to specify how a determination would be made as to what constituted "erroneous information" or who would make the final judgment. Furthermore, given the subjective nature of much of the testimony of references and informants interviewed during personnel security investigations, interminable challenges could be forthcoming from subjects of files who disagreed with opinions expressed about themselves by others. This provision could, indeed, create great mischief.

d. Subsection (c) appears to have a typographical error, or may refer to provisions of other bills currently pending in the Congress which would also amend the Freedom of Information Act. It makes reference to clauses (1) and (2) of subsection (d); however, subsection (d) of this Bill itself contains only one clause

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which is not germane to the substance of subsection (c). If it can be assumed that the intended reference was to clauses (1) and (2) of subsection (b), then the indicated requirement that the President annually report to the Congress on an agency-by-agency basis the number of records and files exempted by reason of clauses (1) and (2) could require the compilation of a rather extensive report by the Office of Security and the diversion of increasingly limited manpower to continuing record-keeping functions.

e. Subsection (d) grants agencies the authority to withhold disclosure of the names of individuals; i.e., informants, who furnished information contained in any record, subject to the provisions of this amendment. Should the Office of Security's files not be considered exempted, then it would become necessary to have all identifying data pertaining to informants removed from investigative reports prior to making them available for review. This would be no simple task even if it entailed only the excising of names and addresses; unfortunately, numerous other references in reports to specific incidents and relationships would tend to readily identify the source of the information. Thus, an editing job of considerable proportion would escalate to one of staggering dimensions. If the confidentiality of field interviews cannot be maintained, the ability of Office of Security investigators to obtain pertinent, forthright, and comprehensive testimony from informants would be rapidly undermined.

3. If this Bill is passed as written and it is ruled that the Agency is not exempt from compliance, we feel it would have very serious implications for our investigative

and personnel security program and procedures. Accordingly, it is strongly recommended that an opinion be obtained from the Office of General Counsel, and, if that office finds that the Office of Security would not be exempt from compliance, your office take whatever action is feasible to secure a specific exemption for the Agency. We would appreciate being kept informed of developments in regard to this piece of legislation.

4. Please advise if we can be of further assistance in this matter.

STATINTL

[REDACTED]

John F. Blake  
Acting Director of Security